

#### Members

Rep. Matt Pierce, Chairperson  
Rep. Linda Lawson  
Rep. Ralph Foley  
Rep. Wes Culver  
Sen. Richard Bray  
Sen. Randall Head  
Sen. Greg Taylor  
Sen. Lindel Hume  
Judge John Marnocha  
Judge Lance D. Hamner  
Professor Craig Bradley  
Professor Stephen F. Smith  
Attorney General Greg Zoeller  
Commissioner Edwin Buss  
Steve Johnson  
Larry Landis  
Chief Justice Randall Shepard



## CRIMINAL CODE EVALUATION COMMISSION

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### MEETING MINUTES<sup>1</sup>

Meeting Date: July 28, 2010  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., Room 404  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Rep. Matt Pierce, Chairperson; Rep. Linda Lawson; Rep. Ralph Foley; Rep. Wes Culver; Sen. Richard Bray; Sen. Randall Head; Sen. Greg Taylor; Sen. Lindel Hume; Judge John Marnocha; Judge Lance D. Hamner; Attorney General Greg Zoeller; Commissioner Edwin Buss; Steve Johnson; Larry Landis; Chief Justice Randall Shepard.

**Members Absent:** Professor Craig Bradley; Professor Stephen F. Smith.

Representative Pierce called the meeting to order at 10:19 a.m. He reviewed the fact that the Commission will be working on two parallel tracks this year. The first is in conjunction with the Pew Center. The Pew Center is reviewing Indiana's criminal justice system and should have proposals to the Commission by the fall. The second track is the line by line criminal code review. Representative Pierce proposed that there be an informal working group formed to review the criminal code and bring proposals on large blocks of code in the form of bills that the Commission

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<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

can review and vote on. The working group will be headed by Mr. Johnson of the Prosecuting Attorneys Council, Mr. Landis of the Public Defenders Council, and Judge Marnocha. The goal of the working group is to have a big bill that has a large consensus in the Commission to present to the General Assembly in the next session. Due to the fact that there is not much staffing for the Commission, Representative Pierce believes that various stakeholders will be willing to aid in the staffing of the working group.

**Mr. Johnson** of the Prosecuting Attorneys Council noted that his group has voted and that they are very interested in reviewing Indiana's criminal code. Mr. Johnson said that the working group needs to look at why the number of crimes in Indiana seems to always be growing. Also, there needs to be attention paid to the proportionality of punishment. Mr. Johnson noted that perhaps the Pew Center could aid the working group in finding out why there is such a large number of Class D felons in the DOC. Finally, Mr. Johnson noted that there needs to be attention paid to sentencing enhancements.

**Mr. Landis** of the Public Defenders Council said that his group will present the Commission with a spreadsheet of all of the offenses in the criminal code. The sheet will note if the offense existed in the 1977 code, how it was classified, and how that compares to the current criminal code. The sheet will show that there are often sentencing enhancements and new crimes created. Mr. Landis said that Indiana is the only state that has a D Felony for theft that does not have a qualifier for a value of the thing stolen.

**Judge Marnocha** said that the working group will concentrate on three areas. First, there are procedures that the courts must use that are outdated and unnecessary. Second, the group will work to pare down the number of crimes. Finally, they will make sure that sentencing is fair and proportional.

**Representative Foley** said that the group should look into alternative penalties for several crimes. He said that it would be a good idea to include people from probation departments. He said that there are many crimes that are not in the criminal code. He said that the group should at the least find all of the felonies in the code. He said that there should be a policy in the General Assembly that, if it is a felony, it must be referenced in the criminal code. Representative Pierce said that there is a policy like that in place for civil liability immunities.

**Representative Foley** said that he has found that there are felonies in the code that are created through regulation and not law. He said that this is unconstitutional and should be addressed by the working group. He also said that there needs to be a review of some of the penalties for different crimes. He provided the example of how hard it would be for a sex offender to find a place where he or she could live in a city like Indianapolis. Mr. Landis said that his spreadsheet will include everything that has a criminal penalty.

**Representative Culver** asked if the goal was to have proposed legislation for this session and therefore available to the Commission before the end of the year. Mr. Johnson said that is the goal, but that the legislation would have a delayed implementation. This would allow the legislature to address any oversights in the changes. Mr. Landis noted that, although we do not yet have the results of the Pew Center report, that there are certain pieces of the code that can be reclassified. Representative Pierce said that he was conflicted as to whether it would be better to have two sets of changes or if it would be better to do one large rewrite. Judge Baker noted that the 1977 revision was a delayed implementation change. He said that if there is one set of changes this year and it is delayed, that there would not be a need to delay the next set of changes. This is particularly true because the changes are not likely to be radical.

**Representative Pierce** asked the Commission to formally adopt his motion to create a working group. The Commission adopted the working group proposal with a unanimous voice vote. The meeting was adjourned at 10:52 a.m.